A PROPOSAL FOR ADDRESSING THE ISSUE OF ABORIGINAL RIGHTS AND FREEDOMS AS THEY RELATE TO THE FEBRUARY, 1983 CONFERENCE OF FIRST MINISTERS ON THE CANADIAN CONSTITUTION

PREPARE BY:

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CONFERENCE OF FIRST MINISTERS ON THE
CONSTITUTION OF CANADA:
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Background

The new Constitution Act (1981) indicates in Part IV section 37(1) that "a constitutional conference composed of the Prime Minister of Canada and the First Ministers of the provinces shall be convened by the Prime Minister of Canada . . ." within one year after the date Part IV came into force which was April 1982.

Section 37(2) goes on to state that ". . . an item respecting constitutional matters that directly affect the aboriginal peoples of Canada, including the identification and definition of the rights of those peoples to be included in the Constitution of Canada, and the Prime Minister of Canada shall invite representatives of those peoples to participate in the discussions on that item."

Further to this, Section 37(3) states that "the Prime Minister of Canada shall invite elected representatives of the governments of the Yukon Territory and the Northwest Territories to participate in the discussions on any item on the agenda of the conference . . . that, in the opinion of the Prime Minister . . ." directly affects the two territories.

Aboriginal rights are given only passing reference in two parts of the Constitution Act. The first is in Part I, Section 25 which essentially provides that Aboriginal Rights and Freedoms are not affected by the

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Canadian Charter of Rights and Freedoms (Part I of the Act). The second reference is found in Part II.

Section 35(1) states:

> The existing aboriginal and treaty rights of the Aboriginal peoples of Canada are hereby recognized and affirmed.

Section 35(2) states:

> In this Act "aboriginal peoples of Canada" includes the Indian, Inuit and Metis peoples of Canada.

The date of the conference has now been set for sometime in February, 1983. A commitment has also been given by the Prime Minister indicating that this will be the first of a series of First Ministers Meetings on the Canadian Constitution should no satisfactory agreement be reached in the February, 1983 conference.

The Development of Positions and Strategy

The agenda item pertaining to Aboriginal rights is clearly an issue that directly affects the Northwest Territories. It should therefore be an item of discussion in which the GNWT ought to be able to actively participate. The question of an appropriate approach to this participation is paramount, given that it is a major concern of Aboriginal organizations in the NWT and about which they will have much to say.

The following proposed framework within which an appropriate approach can be developed is offered for consideration. This approach is proposed in

recognition of recommendation #1 as outlined in the sessional paper on Aboriginal Rights and Constitutional Development in the NWT dated June 1990 which states that:

> The Legislative Assembly recognizes aboriginal rights. Such aboriginal rights are to be more precisely defined through a process of negotiation between the federal government and the NWT Native people.

It is proposed that the GNWT take the initiative and approach the major Aboriginal organizations (COPE, ITC, Dene Nation, NWT Metis Association) with a view to bringing these organizations together to develop a common and unified position on the issue of Aboriginal rights and Freedoms and the Canadian Constitution - including the definition and entrenchment (if so desired) of such rights and freedoms.

Once an agreement-in-principle has been achieved a number of options of how to proceed at the conference can be considered. For example, a joint presentation could be made representing the positions of the major Aboriginal organizations and the GNWT. Another approach might be for each Aboriginal organization to make separate presentations with the GNWT making a presentation in support of these organizations.

The GNWT participation in this proposed approach would be through the Minister for Aboriginal Rights and Constitutional Development and the Minister for Justice and Public Services. Resource staff would be available through the Aboriginal Rights and Constitutional Development Secretariat; the Legal Division of the Department of Justice; and, possibly the Intergovernmental Affairs Secretariat.

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The various Aboriginal organizations have not yet been approached to discuss this proposal. It was an item on the Agenda of the Constitutional Alliance, however the issue was not discussed in any detail during its meeting in Yellowknife on July 6th and 7th, 1982. This matter is likely to be given close attention when the Alliance next meets in August or September 1982. Indeed, the Alliance will be an appropriate forum to discuss this issue of major importance.

It cannot be over emphasized that since the Conference of First Ministers is to be held early 1983, it is imperative that this proposed initiative be explored with the Aboriginal organizations as early as possible.